


A silver Sony Bravia television is shown from a front-facing perspective, resting on a wooden surface. The screen displays a dark gray background with white text. The text is centered and reads: "Telecommuting: Analyzing Compensability Issues with Work-At-Home Injuries". Below this, in a smaller font, it says "By J. Bradley Young". The Sony logo is visible on the bottom bezel of the TV.

Telecommuting: Analyzing Compensability Issues with Work-At-Home Injuries

By J. Bradley Young

A photograph of a silver computer monitor with a blue screen. The screen displays the definition of telecommuting in white text. The monitor is on a stand and is centered in the frame.

Telecommuting: *“to work at home by using a computer connection to a company’s main office.”*

How Many People Telecommute?

- As of 2013, Global Workplace Analytics Estimates that 3.3 million U.S. Workers (not including self-employed workers) considered home their primary place of work.
- This amounts to 2.6% of the U.S. Workforce.
- Telework Grew 80% from 2005 – 2013.



Critical Legal Issues

- **First: whether injuries suffered by telecommuters arise out of the employment. “Arising out of” means that a causal connection exists between the employee's duties and the injury. Heiskell v. Golden City, 260 S.W.3d 443, 450 (Mo.App.S.D.,2008).**
- **Second: whether such injuries are experienced in the course of employment. “In the course of employment” refers to the time, place and circumstances of the injury. Id. at 450.**

Critical Investigation Issues

- **First: Authenticity - - verifying that the accident actually occurred in conjunction with work activities (as opposed to tripping over the dog).**
- **Second: Medical Causation - - whether the injury is medically and causally related to the worker's home-office activities (as in Occupational Disease claims).**



Caselaw

- No identified telecommuting or work-at-home claims from the Missouri Court of Appeals. States that HAVE addressed this issue are:
- Utah. Clevite, Inc. v. Labor Commission, 996 P.2d 1072 (Utah Ct. App. 2000). Claimant was a sales manager for Employer. Because Employer had no offices in Salt Lake City, Claimant worked from his home. Employer authorized and approved the Claimant working from his home.

Clevite, Inc. v. Labor Commission

- On DOI, Claimant was expecting a package from Employer. Claimant saw the letter carrier approaching with packages from Employer and Claimant went out to spread some salt on the driveway. Claimant slipped and fell on the driveway and was injured as a result of his fall.



Clevite, Inc. v. Labor Commission

- Employer denied the claim on the basis that Claimant did not suffer a work-related injury.
- Employer asserted that it: “never requested, directed, encouraged, or reasonably expected Claimant to salt his driveway.”
- Employer also denied the claim, arguing that Claimant was not in an “employer controlled” area when the injury occurred.



Clevite, Inc. v. Labor Commission

- Both the Utah Industrial Commission and the Court of Appeals awarded benefits, holding: *“(Claimant’s) injury arose from a risk associated with his work for (Employer) due to the parties ‘work at home’ arrangement”*...While it was true that salting the driveway was something Claimant had a non-work duty to perform...*“yet the fact remains that when he did this task it was in an attempt to remove a hurdle that could have prevented the delivery of the expected business package...(Claimant’s) act was motivated in-part by a purpose to benefit (Employer) and thus was reasonably incidental, rather than tangentially related, to his employment.”*

Verizon v. WCAB (2006)

- **Pennsylvania - - Claimant was a systems engineer and worked 3 days per week at the company office and 2 days per week from her home office in Claimant's basement. Claimant took a break and went upstairs to get a glass of juice. While upstairs she received a work-related phone call and proceeded to go back downstairs. She then tripped and fell on the stairs, resulting in injuries that required surgical repair.**
- **Claim was found to be compensable and the Employer filed an appeal with the Pennsylvania Court of Appeals.**



Verizon v. WCAB (2006)

- COA held that in light of the Employer's approval of the home office, the stairs leading to the basement were similar to stairs leading into the Company's premises.
- The Penn COA went on to explain that going upstairs for a drink of juice fell under the "Personal Comfort" doctrine.
- The Penn found the claim to be compensable, deciding that the act of getting a drink was not a deviation from employment.



How Does This Apply to MO ?

- **Personal comfort doctrine is a legal principle that states that the that the course of employment is not interrupted by certain acts relating to the employee's personal comfort such as short breaks for eating, drinking, using the restroom, smoking, seeking relief from discomfort, etc.**

How Does This Apply to MO ?

- The COA seemingly eliminated the Personal Comfort Doctrine in Johme: *“The Commission's decision to award benefits is based on its finding that the personal comfort doctrine is consistent with §287.020.3(2) after the 2005 amendments... The use of this personal comfort doctrine led to the erroneous award, and the Pile approach is not currently supported by statute or case law.”*

How Does This Apply to MO ?

- In light of the MO Supreme Court Decision in Johme, however, the status of The Personal Comfort Doctrine is uncertain.



Tenn: Wait v. Travelers (2007)

- **Employer allowed Claimant to work from her home and Claimant set up a home office in a spare bedroom.**
- **Claimant took a lunch break and was in her kitchen**
- **Claimant's neighbor then came into through the back door and started a fight with Claimant, causing severe injuries.**



Tenn: Wait v. Travelers (2007)

- **COA focused on 2 issues. First, hazard or risk. “Once it is established that the home premises are also the work premises...it follows that the hazards of the home premises encountered in connection with the performance of the work are also hazards of the employment.”**



Tenn: Wait v. Travelers (2007)

- **Second, even though the COA said that the hazard was work-related, the Court could NOT say that the injury AROSE out of the employment. Court cited Larson for the prospect of a “neutral risk”, that is one neither directly connected with work or exclusively personal. Under Tennessee law, the risk must be work-related for the claim to be compensable and the claim was therefore denied.**

How does this apply to MO ?

- In Missouri (as in Tennessee), the “neutral” assaults are not compensable. *“Irrational, unexplained or accidental assaults of so-called ‘neutral’ origin...in some jurisdictions that circumstance is regarded as a sufficient reason for awarding compensation; but not in Missouri”*. Flowers v. City of Campbell, 384 S.W.3d 305, Mo.App. S.D., 2012 (August 31, 2012)

Oregon: Sandberg v. JC Penney (2011)

- **Claimant worked 4 days per week at home. Employer required Claimant to keep a significant inventory of fabric samples in her home office, and Claimant stored these items in her garage.**
- **As she was moving fabric from her garage to her van she tripped over her dog and fell, breaking her leg.**



Oregon: Sandberg v. JC Penney (2011)

- ALJ ruled in favor of the Employer, citing the dog as a non-work-related hazard. The Oregon Court of Appeals reversed and ruled in favor of Claimant.
- COA ruled that the Employer made the home an extension of its premises.



Oregon: Sandberg v. JC Penney (2011)

- Oregon COA: *“If an employer, for its own advantage, demands that a worker furnish the work premises, the risks of those premises encountered in connection with the performance of work are risks of the work environment, even if they are outside of the employer’s control, and injuries resulting from those risks arise out of the employment.”*

Application to Missouri Claims

- The Missouri Court of Appeals will ultimately conclude that, as a general proposition, injuries that occur in a home-based office **MAY** be compensable so long as the following conditions are met:



Conditions for Compensability

- First: Claimant must meet the “Arising out of” condition - - “Arising out of” means that a causal connection exists between the employee's duties and the injury.
- Second: Claimant must meet the “In the course of employment” condition - - which refers to the time, place and circumstances of the injury.

Conditions for Compensability

- Third: Claimant must overcome the “No Greater Risk” defense. As the Missouri Supreme Court stated: *“Johme failed to meet her burden to show that her injury was compensable because she did not show that it was caused by risk related to her employment activity as opposed to a risk to which she was equally exposed in her “normal non-employment life.” See Section 287.020.3(2)(b).” Johme at 512.*

Changing Technology

- **Analysis not limited to “work at home” situations.**
- **This applies to any situation where the Claimant is not physically on the Employer’s premises yet is still performing work for the Employer.**

Changing Technology

- Talking on a cell phone during non-work hours and/or while driving for personal/non-work-related purposes.



Changing Technology

- **Work-Related Texting while walking at lunch or even on the weekend.**



Guidance for Employers

- **Because of the increased exposure associated with a new class of claims that might occur outside of the areas under the control of employers, all employers should take the following steps to reduce the likelihood of accidents and increase the ability to successfully defend claims arising from a work-at-home environment:**



Policies for Employers

- **First: Establish written policies and a written agreement between the Employer and the Employee concerning the telecommuting arrangement that addresses the activities that are understood to be in the scope and course of employment.**



Policies for Employers

- These policies should be broad enough to cover not only work-at-home situations, but also policies that cover cell phone use and texting.



Policies for Employers

- **Second, specify that a single room in the house be used as the home office. This avoids the problem of an injury occurring elsewhere in the home or nearby being claimed as a work-related injury.**



Policies for Employers

- **Third, establish written procedures that define when home-based employees perform work, e.g., calling a supervisor or logging onto the computer network. Also establish specific written procedures for reporting an alleged work accident.**



Policies for Employers

- The Penalty provisions of Section 287.120.5 would still apply to compensable work-at-home injuries: *“Where the injury is caused by...the employee's failure to obey any reasonable rule adopted by the employer for the safety of employees, the compensation and death benefit provided for herein shall be reduced at least twenty-five but not more than fifty percent”*



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Questions?

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